

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION**

SHERIFF BRAD COE, *et al.*

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., *et al.*

Defendants.

No. 3:21-cv-00168

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY

Defendants submit this notice to advise the Court of a recent unanimous opinion from the U.S. Court of Appeals for the Sixth Circuit related to the issues in this case. As the Court is aware, a district court for the Southern District of Ohio entered a preliminary injunction partially enjoining the government from relying on the September Guidance. *See* Pls.' Notice of Suppl. Auth. (ECF No. 81) (citing *Arizona v. Biden*, --- F.Supp.3d ----, No. 3:21-cv-314, 2022 WL 839672 (S.D. Ohio Mar. 22, 2022)). On April 12, 2022, the Sixth Circuit granted the governments' motion to stay the preliminary injunction pending appeal. Order, *Arizona v. Biden*, No. 22-3272 (6th Cir. April 12, 2022) (attached). The Sixth Circuit, in an opinion by Chief Judge Sutton, reasoned (1) that the States likely lacked standing, *id.* at 5-8; (2) that the September Guidance likely is unreviewable under the Administrative Procedure Act because it is not final agency action, *id.* at 9-12; (3) that, even if it were reviewable, Defendants were likely to prevail on the merits because (a) the September Guidance likely is not "contrary to law," *id.* at 12-15; (b) the September Guidance likely is not "arbitrary or capricious," *id.* at 15-16; and (c) the September Guidance likely was not required to undergo notice-and-comment procedures, *id.* at 16. For the Court's convenience, Defendants are attaching a copy of the Sixth Circuit's opinion to this filing.

Dated: April 13, 2022

Respectfully submitted,

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/s/ Brian C. Rosen-Shaud (by permission)

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on April 13, 2022.

/s/ Michael F. Knapp
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